

CROWELL & MORING LLP
Ethan P. Schulman (eschulman@crowell.com)
Nathaniel P. Bualat (nbualat@crowell.com)
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: 415.986.2800
Facsimile: 415.986.2827

Attorneys for Plaintiff
CAPITAL TRUST, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAPITAL TRUST, INC.,

Plaintiff,

v.

Case No. C 09-02492 JSW

**JOINT CASE MANAGEMENT
STATEMENT; REQUEST TO VACATE
TRIAL DATE AND ORDER THEREON**

WALTER R. LEMBI, individually and as
trustee of the WALTER AND LINDA
LEMBI FAMILY TRUST DATED JUNE
30, 2004; FRANK E. LEMBI, individually
and as trustee of the OLGA LEMBI
RESIDUAL TRUST CREATED UNDER
THE PROVISIONS OF PART THREE OF
THE LEMBI FAMILY REVOCABLE
TRUST DATED FEBRUARY 17, 1984,
and as the trustee of the FRANK E.
LEMBI SURVIVOR'S TRUST DATED
FEBRUARY 17, 1984; BILLIE
SALEVOURIS, individually, BILLIE Z.
SALEVOURIS, as trustee for THE BILLIE
SALEVOURIS TRUST DATED
AUGUST 23, 1983 AS RESTATED ON
MAY 24, 2002; DAVID M. RAYNAL,
individually and as trustee for the DAVID
M. RAYNAL REVOCABLE TRUST
DATED MAY 9, 2002; RALPH DAYAN,
individually and as co-trustee for the
AMENDED AND RESTATED DAYAN
FAMILY REVOCABLE TRUST DATED
DECEMBER 31, 1991,

Date: May 14, 2010
Time: 1:30 p.m.
Dept.: Courtroom 11, 19th Floor
Judge: The Hon. Jeffrey S. White

Defendants.

I. JOINT CASE MANAGEMENT STATEMENT

Pursuant to Local Rule 16-10(d) and the Court's Civil Standing Order No. 5, Plaintiff Capital Trust, Inc. ("Capital Trust"), Defendants Walter R. Lembi, individually and as trustee of the Walter and Linda Lembi Family Trust dated June 30, 2004, Frank E. Lembi, individually and as trustee of the Olga Lembi Residual Trust created under the provisions of Part Three of the Lembi Family Revocable Trust dated February 17, 1984, and as the trustee of the Frank E. Lembi Survivor's Trust dated February 17, 1984, Billie Salevouris, individually, Billie Z. Salevouris, as trustee for the The Billie Salevouris Trust dated August 23, 1983 as restated on May 24, 2002, David M. Raynal, individually and as trustee for the David M. Raynal Revocable Trust dated May 9, 2002, Ralph Dayan, individually and as co-trustee for the Amended and Restated Dayan Family Revocable Trust dated December 31, 1991 (collectively, "Defendants"), and Plaintiffs-in-Intervention LBUBS 2004-C8 VAN NESS LIMITED PARTNERSHIP, LBUBS 2004-C8 BAY CLAY LIMITED PARTNERSHIP, LBUBS 2004-C8 JONES STREET LIMITED PARTNERSHIP, LBUBS 2004-C8 LOMBARD STREET LIMITED PARTNERSHIP, LBUBS 2004-C8 GOUGH STREET LIMITED PARTNERSHIP, LBUBS 2004-C8 BARTLETT STREET LIMITED PARTNERSHIP, LBUBS 2004-C8 MASON STREET LIMITED PARTNERSHIP, LBUBS 2004-C8 HYDE STREET LIMITED PARTNERSHIP, and LBUBS 2004-C8 JOICE STREET LIMITED PARTNERSHIP ("Plaintiffs-in Intervention")¹ (collectively with Capital Trust and Defendants, the "Parties") submit this Joint Case Management Statement.

A. Brief Summary of Case

In its Amended Complaint, Capital Trust seeks damages for Defendants' breach of various guaranty contracts. Capital Trust alleges that Defendants, through various Guaranties of

¹At a August 21, 2009 hearing, Capital Trust stipulated to Plaintiffs-in-Intervention's limited intervention into this case for the sole purpose of opposing Capital Trust's Motion for Right to Attach Order and Order for Issuance of Writ of Attachment against Defendants ("Attachment Motion"). Pursuant to the Court's oral ruling at that hearing, all of Capital Trust's arguments and objections with respect to Plaintiffs-in-Interventions' intervention beyond opposing the Attachment Motion were expressly reserved. For the sake of efficiency, however, Plaintiffs-in-Intervention have been included in this joint submission.

1 Payments (“Mezzanine Guaranties”), are the guarantors of various Mezzanine Loan Agreements
 2 (“Mezzanine Loan Agreements”), which have been assigned to Capital Trust. Capital Trust
 3 further alleges that the borrowers on the Mezzanine Loan Agreements (“Mezzanine Borrowers”)
 4 defaulted on their payment obligations to Capital Trust, and have not made any required payment
 5 since March 11, 2009. On or about June 2, 2009, Capital Trust served a Notice of Event of
 6 Default and Acceleration and made a demand on Defendants for payment pursuant to the
 7 Mezzanine Guaranties. Defendants deny, among other things, that Mezzanine Borrowers
 8 defaulted under the Mezzanine Loan Agreements and that they are obligated to make any
 9 payments to Capital Trust pursuant to the Mezzanine Guaranties.

10 In their Complaint in Intervention, Plaintiffs-in-Intervention seek a declaratory judgment
 11 and injunctive relief. Plaintiffs-in-Intervention allege that they are parties to a series of loans
 12 (“Senior Loans”) between them and several entities (“Senior Borrowers”) that are related to both
 13 the Mezzanine Borrowers and Defendants. In connection with the Senior Loans, Defendants
 14 executed various guaranties with respect to the Senior Borrowers’ obligations pursuant to the
 15 Senior Loans (“Senior Guaranties”). Plaintiffs-in-Intervention further allege that they and Capital
 16 Trust are parties to a written contract whereby Capital Trust’s rights with respect to the
 17 Mezzanine Loans and Guaranties are subordinated to Plaintiffs-in-Intervention’s rights with
 18 respect to the Senior Loans and Guaranties (“Intercreditor Agreement”). According to Plaintiffs-
 19 in-Intervention, Capital Trust has taken positions in this case that are contrary to the terms of the
 20 Intercreditor Agreement and as a consequence a live controversy exists regarding the terms of
 21 that agreement. Capital Trust denies, among other things, that it has taken positions that are
 22 contrary to the terms of the Intercreditor Agreement and that there is a live controversy regarding
 23 the terms of that agreement.

24 **B. Status**

25 On September 16, 2009, this Court issued an Order granting Capital Trust’s Application
 26 for Right to Attach Order and Writ of Attachment. At the end of that Order, the Court strongly
 27 urged the parties to continue to meet and confer in order to reach a mutually agreeable resolution
 28 of this dispute. In urging the Parties to settle this matter, the Court noted that there likely is a

1 limited pool of assets available for such a settlement.

2 Since the Court's issuance of its September 16, 2009 Order, although Capital Trust has
3 identified certain non-exempt assets that are subject to attachment under that Order, it has not
4 attached such assets because it is attempting to reach a business resolution of this matter. As
5 reported in the parties' March 25, 2010 Joint Case Management Statement, the parties have
6 engaged in workout negotiations that have not yet resulted in a settlement of this action.
7 Currently, Capital Trust is considering a potential sale of its interest in the Mezzanine Loans to a
8 third party, and is engaged in negotiations with potential third party purchasers. Capital Trust
9 believes that in the event it is successful in selling its interest in the Mezzanine Loans, a sale is
10 likely to close within a period of 60 to 90 days. Such a sale may render a trial and any further
11 proceedings in this action unnecessary, and may lead to the dismissal of the action.

12 **C. Appropriateness of ADR (See Local Rule 16-10(d))**

13 The Parties' current view is that no form of ADR is appropriate at this time.

14 **II. REQUEST TO VACATE TRIAL DATE**

15 Because Capital Trust's potential sale of the Mezzanine Loans may resolve this action and
16 avoid the need for the Court and the Parties unnecessarily to expend limited resources preparing
17 for trial, the Parties respectfully request that the Court: (1) vacate the May 14, 2010 case
18 management conference, the June 7, 2010 pretrial conference, the June 28, 2010 trial date and all
19 deadlines related to the current trial date; and (2) set a further case management conference at
20 least 90 days from the date of this request to address the status of any settlement or business
21 discussions and the need, if any, to set a new trial date.

22
23 This Joint Case Management Statement and Request to Vacate Trial Date is filed
24 electronically by Capital Trust's counsel who hereby attests, in accordance with General Order 45
25 Section X(B), that Defendants and Plaintiffs-in-Intervention concur in its filing.
26
27
28

1 Dated: May 7, 2010

CROWELL & MORING LLP

2
3 /s/ Ethan P. Schulman
4 Ethan P. Schulman
Attorneys for Capital Trust, Inc.

5 Dated: May 7, 2010

FRIEDMAN DUMAS & SPRINGWATER LLP

6
7 /s/ Ellen A. Friedman
8 Ellen A. Friedman
9 Attorneys for David Raynal, Billie Z. Salevouris, and
Ralph Dayan

10 Dated: May 7, 2010

LEMBI GROUP LEGAL DEPARTMENT

11
12 /s/ Edward C. Singer, Jr.
13 Edward C. Singer, Jr.
14 Attorneys for Defendants Walter R. Lembi and
Frank E. Lembi

15 Dated: May 7, 2010

DUANE MORRIS LLP

16
17 /s/ Phillip K. Wang
18 Phillip K. Wang
19 Attorneys for Plaintiffs-in-Intervention

20
21 119046\0002001\902069439.1

22 The parties' request to vacate the May 14, 2010 case management conference and the pretrial
23 and trial dates is GRANTED. This matter shall be set down for a further conference on
24 Friday, August 13, 2010. If this matter has not been dismissed by that date, the parties shall
25 submit a Joint Status Conference Statement with proposed dates for a pretrial conference and
trial.

26 **IT IS SO ORDERED this 7th day of May, 2010.**

27 
28